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1966

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 136

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida,

Appellees.

MOTION OF APPELLEE, W. B. FREEMAN, SUPERVISOR OF REGISTRATION OF MONROE COUNTY, FLORIDA, TO DISMISS OR TO AFFIRM

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MOTION OF APPELLEE, W. B. FREEMAN, SUPERVISOR OF REGISTRATION OF MONROE COUNTY, FLORIDA, TO DISMISS OR TO AFFIRM

MOTION TO DISMISS OR TO AFFIRM

The Appellee, W. B. Freeman, Supervisor of Registration of Monroe County, Florida, in the above-entitled case moves to dismiss or to affirm on the grounds that the Appellants do not have standing to maintain this appeal and that the questions presented are so unsubstantial as not to require further argument.

STATEMENT

This is an appeal to the Supreme Court of the United States taken by appellants, Richard H. M. Swann, the original plaintiff, and the Supervisor of Elections of Dade County, Florida, one of the defendants, from an order of the United States District Court for the Southern District of Florida, entered on March 18, 1966, holding that a legislative apportionment plan, HB 17-X(66), enacted by the Legislature of the State of Florida on March 9, 1966, did not deny the Appellant Swann or the other citizens of Florida due process of law or equal protection of the law as guaranteed by the Fourteenth Amendment of the Constitution of the United States. The District Court refused to enjoin the application of HB 17-X(66).

The order entered below did not in any way affect the duties imposed by law upon the Appellant Supervisor of Elections of Dade County, or any other Supervisor of Elections in any county in the State of Florida. The supervisors of Elections are not constitutional officers but are legislative officers created by statutes to help carry out the duties imposed upon the Legislature by *Article VI* of the *Constitution of Florida*.

It has been admitted by the authorities of Dade County, Florida that HB 17-X (66), which is attacked on this appeal, is not invidiously discriminatory insofar as it applies to Dade County, Florida.

This statement is submitted to show that the Appellants in this cause do not have standing to maintain this appeal and that the questions attempted to be presented are unsubstantial.

OPINIONS BELOW AND APPENDICES

1. The opinion and order appealed entered on March 18, 1966, by the United States District Court for the Southern District of Florida is printed herein as Appendix A.

2. The opinion and order of the United States District Court for the Southern District of Florida entered on December 23, 1965, is printed herein as Appendix B.

3. Memorandum prepared by counsel for the Appellant Supervisor of Elections of Dade County, Florida, addressed to the Mayor of Metro, Dade County, Florida, and the Dade County Board of County Commissioners, dated March 21, 1966, is printed herein as Appendix C.

4. Criteria and Guideline for Reapportionment as Established by the Federal Courts, prepared by the Attorney General of the State of Florida, dated March 2, 1966, is printed herein as Appendix D.

5. The Appellant Swann's complaint through paragraph VI filed on or about March 28, 1962, is printed herein as Appendix E.

ARGUMENT

1. THE APPELLANTS DO NOT HAVE STANDING TO MAINTAIN THIS APPEAL:

It is a fundamental rule of great antiquity and one of constant and continuing application that a person may not invoke the aid of the judiciary, state or federal, to rule upon a question unless that person has a direct, immediate and personal interest to be served. The courts do not favor a volunteer or an officious intermeddler and will not answer abstract questions posed out of curiosity or give an advisory opinion on speculative future events at the request of one not having the requisite interest in the cause.

Especially is this true where a litigant attacks the constitutionality of legislation, state or federal.

> "The various doctrines of 'standing,' 'ripeness,' and 'mootness,' which this Court has evolved with particular, though not exclusive, reference to such cases are but several manifestations—each having its own 'varied application' — of the primary conception that federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action. ***"This court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought

into actual, or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here.'***"

(Poe v. Ullman, 367 US 497, 504.)

"A federal court cannot 'pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies.'***" *(Baker v. Carr, 369 US 186, 204.)*

"***The party who invokes the power must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.***"

(Massachusetts v. Mellon, 262 US 447, 488.)

A litigant will not be heard to assert theoretical defects in a statute when he is not personally affected by the discrimination which he alleges exists. Neither can one complain of possible unequal operation of a statute on others less favorably situated than the complaining party. *Shearer v. Burnet, 285 US 228, 234.*

Moreover, the party who contends that a statute injures a particular class must show not only that he is a member of that class but also that he will be individually and personally affected or injured by the operation or enforcement of the statute in question. Such a person

does not have the right to meddle in the affairs of other individuals, or a class of individuals, in the absence of any actual interest in that person which is, or will be, prejudiced or impaired by the statute in question. A party who proposes to represent a class must necessarily show himself personally injured in the same manner in which he asserts the class to be injured.

"***It has been repeatedly held that one who would strike down a state statute as violative of the Federal Constitution must show that he is within the class of persons with respect to whom the act is unconstitutional, and that the alleged unconstitutional feature injures him.***"

(Heald v. District of Columbia, 259 US 114, 123.)

"***We will not attempt at all to review the conclusions reached on the merits, further than to remark that in a class suit if there is a failure to make out a case for any named plaintiff, Davis being the only one here, there is authority that no decree can be rendered for plaintiffs. ***In the matter of asserting constitutional rights touching discrimination, only someone who shows himself injured may complain; he cannot champion others who do not choose to complain.***"

(Cook v. Davis, 178 F. 2d 595, 599.)

"There is brought into play the familiar constitutional principle that one whose rights are not affected

by a statute as *it applies to him* is not in a position to question its validity *as applied to others.* ***"

(George v. United States, 196 F. 2d 445, 452, cert. den. 344 US 843.)

Another principle also moves into focus in this cause with respect to the right of the Appellant, Supervisor of Elections of Dade County, to maintain this appeal.

Within the ambit of the general principle that the constitutionality of a statute cannot be questioned by one whose rights are not affected thereby and who has no personal interest in defeating it, it has also been held that a public officer cannot question the validity of a statute fixing his duties since the interest of such an officer is official and not personal. The reasoning supporting this rule is sound. If the rule were otherwise a public officer could ignore any law which he deemed to be invalid and thus seriously disrupt the orderly conduct of government to vindicate purposes growing out of mere whim. This rule is subject, however, to the qualification that in any case in which the officer might be held personally liable for his acts or where he will be required to expend public funds he has such an interest as will entitle him to question the validity of the act.

"*** A petitioner does not have standing to sue unless he is 'interested in and affected adversely by the decision' of which he seeks review. His 'interest must be of a personal and not of an official nature.'

"***A litigant must show more than that he suffers in some indefinite way in common with people generally.'***".

(Joint Anti-Fascist Refugee Committee v. McGrath, 341 US 123, 151.)

"It cannot, then, be gainsaid that the Legislature has the power to prescribe qualifications for admission to the practice of law in this state, concurrent with that of the Supreme Court. And if the Legislature has such power, then the Respondents have no alternative except to administer the law in accordance with the legislative mandate. This is so because of the well established rule that a ministerial officer, charged with the duty of administering a legislative enactment, cannot raise the question of its unconstitutionality without showing that he will be injured in his person, property, or rights by its enforcement, *** or that his administration of the Act in question will require the expenditure of public funds, ***."

(Barr v. Watts, 70 So. 2d 347, 350.)

This is the general rule followed in most of the jurisdictions in this country. *Assessor of Haverhill v. New England Tel and Tel (Mass.), 124 NE2d 917; Loew v. Hagerle Bros., 226 Minn. 485, 33 NW2d 598; S. S. Kresge Company v. Howard, 357 Mo. 302, 208 SW2d 247; Columbus & G. R. Co. v. Miller, 283 US 96.*

A third rule having application here which grows out of and is a corrollary to the rule concerning "standing"

to sue is the rule of appellate jurisdiciton providing that every party desiring to appeal from a judgment must be injured, prejudiced or aggrieved by the terms of the judgment or decree sought to be appealed. One may be a proper party to a suit at its commencement and yet be without such an interest recognized as sufficient to claim the right of appeal to determine a constitutional question. The interest required must be a subsisting one, for if the interest is terminated before or at the time of the entry of the judgment or decree appealed, then the one whose interest has so ceased to exist has no standing to appeal.

"The appellee has interposed a motion to dismiss on the ground that the appellant is not a party in interest in this appeal, ***.

"It is a fundamental rule of appellate jurisdiction that every person desiring to appeal from a decree must be interested in the subject-matter of the litigation, and the interest must be immediate and pecuniary and not a remote consequence of the judgment. The interest must be substantial, and a merely nominal party to an action cannot appeal. The interest must also be subsisting, for although a party may have an appealable interest at the commencement of the suit, if that interest has terminated before the entry of the judgment or decree sought to be appealed from, he cannot appeal. ***"

(Hamilton Trust Co. v. Cornucopia Mines Co., 223 Fed. 494, 499, cert. den. 239 US 641.)

"***The defendant does not argue that the judgment of the district court invaded any of its rights. It is clear that by that judgment the defendant suffered no detriment and that its position was not prejudiced.

"The defendant makes some attempt to claim the right by this appeal to vindicate what it calls the public interest. But, as regards the public interest, the defendant is a mere volunteer. With no claim of any special relationship to the issue it seeks to litigate it has no more status to represent the public interest than any man off the streets. ***

"Authority is hardly needed for a proposition so obvious as that one who has no interest in the litigation, and who asserts no right which has been adversely affected by the decision of the lower court, cannot appeal from that decision. ***"

(Sperry Rand Corp. v. Bell Telephone Laboratories, Inc., 317 F. 2d 491, 493.)

Applying the above-stated rules, it is abundantly clear neither of the Appellants in this cause has an appealable interest in the decree they seek to have reviewed.

The original plaintiff, the present Appellant Swann, filed his complaint in the United States District Court for the Southern District of Florida, on or about March 28, 1962, joining as defendants Tom Adams, Secretary of State of the State of Florida; Claude R. Brown, Supervisor of Elections of Dade County, Florida; E. L. Gates, Supervisor

of Elections of Broward County, Florida; and W. B. Freeman, Supervisor of Elections of Monroe County, Florida.

The Supervisors of Elections were sued as representatives of all other Supervisors of Elections similarly situated in the State of Florida. (See Appendix E attached hereto.) However, the Appellant Swann did not attempt to file a class suit wherein he joined as plaintiffs all other voters of Florida similarly situated. In *Baker v. Carr, 369 US 186*, at pages 204 and 205 of this Court's opinion, on the question of the standing of the plaintiffs in *Baker* to maintain the suit, this Court said in parts pertinent here:

> "***These appellants sued 'on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated. . . .' The appellees are the Tennessee Secretary of State, Attorney General, Co-ordinator of Elections, and members of the State Board of Elections; the members of the State Board are sued in their own right and also as representatives of the County Election Commissioners whom they appoint.
>
> "We hold that the appellants do have standing to maintain this suit. ***"
>
> *(Baker v. Carr, 369 US 186, 204, 205, 206.)*

The Appellee does not question the general jurisdiction of this Court over the subject matter of this cause or the right of Appellants to maintain this appeal under the proper circumstances. However, the present Appellants do not seek to vindicate any right in which they have a per-

sonal interest with respect to the decree here sought to be reviewed. The verity of this fact has been admitted by counsel for the Appellant, Claude R. Brown, Supervisor of Elections of Dade County, Florida, and published in a memorandum prepared by said counsel, addressed to the Honorable Chuck Hall, Mayor of Metro, Dade County, Florida, and the Members of the Dade County Board of County Commissioners, which memorandum was dated March 21, 1966. This memorandum is reproduced in full as Appendix C, attached to this brief. This memorandum reads in part particularly pertinent here:

> "The legislative plan approved by the District Court on Friday is within acceptable limits as to Dade (within one percent in the House, 5.87 percent under-represented in the Senate). However, as to the rest of of the State, it plainly fails to meet the accepted tests: that no deviation that is avoidable be permitted, and no deviation above 10 to 15 percent will be tolerated. ***
>
> "Although Dade County is not presently invividiously discriminated against, I recommend that an appeal be taken for three basic reasons:
>
> "1. The decision is erroneous and the plan invidiously discriminates against much of the rest of the State. In this litigation, we have successfully carried the struggle thus far for all Floridians who were denied equal representation. I do not think we should stop short of a constitutional solution because we now have our relief. Whether it pleases us or not we have

assumed the role of leadership in our State. We should assume the responsibility as well. An appeal, if unsuccessful, would do no harm to us or anyone else. An appeal, if successful, could not adversely affect the citizens of Dade."

This is an unequivocable admission by the one charged with the prosecution of this appeal on the part of Dade County, Florida, that Dade County has no further interest in this litigation, that they have gotten all the relief they are entitled to, that Dade County is no longer invidiously discriminated against in the Florida Legislature, and that this appeal can neither help nor harm the Appellants regardless of its outcome. Therefore, it is unmistakably clear that the Appellants do not now have a legitimate interest to be served necessary to give them standing to maintain this appeal.

The Appellant Supervisor of Elections of Dade County has even less interest, if possible, than the Appellant Swann. As can be seen from the complaint as set out in Appendix E, attached hereto, the Supervisor of Elections of Dade County was sued in his official capacity because:

"•••it is the duty of the aforesaid supervisors of registration, within their respective counties, to receive the filing of candidates for the Legislature whose districts lie wholly within their county, to prepare ballots, to organize canvassing boards to assist in counting said returns and to issue certificates of election."

The decree and order appealed from does not run against the Supervisors of Elections. The operation or enforcement of the questioned act pursuant to the order cannot affect them personally in any way. The order does not command the Supervisors to do any affirmative act nor does it prohibit them from carrying out any of the duties imposed upon them by law. Furthermore, it has not been shown, and cannot be shown, that the said Supervisors will be required by the terms of the statute in question or the order here appealed to expend public funds for which they may be held personally liable. The Supervisors were sued in their official capacity; they have suffered no detriment or disadvantage by the enactment of House Bill 17-X(66) which is admitted by the Appellant Supervisor of Elections of Dade County; and, consequently, this Appellant has no standing to maintain this appeal.

> "***While, so far as state practice is concerned, the authority of a public officer to assail in the courts of the state the constitutional validity of a state statute is a local question, this fact does not alter the fundamental principle, governing the determination of the Federal question by this court, that the protection of the 14th Amendment against state action is only for the benefit of those who are injured through the invasicns of personal or property rights or through the discriminations which the Amendment forbids. The constitutional guaranty does no (sic) extend to the mere interest of an official, as such, who has not

been deprived of his property without due process of law or denied the equal protection of the laws."

(Columbus & G. R. Co. v. Miller, 283 US 96, 99, 100.)

II. THE QUESTIONS PRESENTED ARE UNSUBSTANTIAL:

1. On page 9 of the jurisdictional statement, the Appellants contend that the plan submitted by them to the District Court at that court's invitation was in accord with the size requirements of *Florida Constitution, Article VH, Section 2.* By including this portion of their argument in their statement of the case, the Appellants attempt to create the impression that this provision of the Constitution continues to have some efficacy and thereby imports an added weight to the apportionment plan submitted by them which does not inhere in the Florida Legislature's plan questioned on this appeal.

Obviously the Appellants have not read, or have read but have misinterpreted, three recent cases declaring *all* limitations contained in the Florida Constitution governing the size of both houses of the Legislature void and inoperative. *Sobel v. Adams (DCSD Fla.), 208 F. Supp. 316; In Re Advisory Opinion to the Governor (Fla.), 150 So. 2d 721; Jordan v. Green (Fla.), 173 So. 2d 448.*

On July 23, 1962, in the *Sobel* case, the Federal District Court ruled on pages 318 and 319 of the opinion:

"2. The Court concludes and hereby determines that the existing constitutional and statutory pro-

visions relating to the apportionment and reapportionment for the nomination and election of the Senate and the House of Representatives of the Florida Legislature are invidiously discriminatory against the plaintiffs and others similarly situated, and deny to them equal protection of the law as guaranteed by the Constitution of the United States. Said provisions are hereby found and declared to be prospectively null, void and inoperative."

(Sobel v. Adams, 208 F. Supp. 316, 318, 319.)

On January 30, 1963, the Governor of Florida requested an advisory opinion from the Supreme Court of Florida, reported as *In Re Advisory Opinion to the Governor, 150 So. 2d 721.* As can be seen from the opinion, the Governor's request grew out of his concern respecting his duties as they might be affected by the decree of the district court in the *Sobel* case.

During the course of its opinion the Supreme Court of Florida recited the above quotation from *Sobel* and gave this answer to the Governor:

"It therefore appears that the controlling question giving you concern is whether or not the judgment of the aforementioned Federal Court dated July 23, 1962, has eliminated from the Constitution of Florida the State organic limitation on the House and Senate. We think the language is clear and unequivocal wherein the Federal Court said, 'Said provisions are hereby found and declared to be prospectively null,

void and inoperative.' The only doubt might rest with whether or not the Court had jurisdiction to so order. Without conceding the right, we must concede the power, of the Federal judicial system to enforce its judgment in this cause. The jurisdiction is settled in view of the pronouncement of the Supreme Court of the United States in Baker v. Carr, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663. And so it is that the decision of the Federal Court, supra, in this cause has eliminated the limitations provided in the Florida Constitution on the size of the House and Senate, and you have the power to continue to call recurring extra sessions under Section 8, Article IV, Florida Constitution, until such time as a reapportionment bill is enacted by the Legislature in conformity with the Fourteenth Amendment of the Constitution of the United States, notwithstanding the aforesaid limitations as they were prior to the decision of the Federal Court, supra, on July 23, 1962, and which have been by virtue of that decree invalidated."

(In Re Advisory Opinion to the Governor, 150 So. 2d 721, 724.)

Both of the above two cited cases were quoted from and reaffirmed in *Jordan v. Green (Fla.), 173 So. 2d 448.*

These opinions did not purport merely to invalidate a specific section of *Article VII* of the *Florida Constitution.* These opinions specifically held that *all* limitations contained in the Constitution of Florida prior to July 23, 1962, had been eliminated and declared void and inoperative.

2. On page 10 of their jurisdictional statement, the Appellants reach outside the record and quote from a paper styled "Criteria and Guidelines for Reapportionment as Established by the Federal Courts," dated March 2, 1966, prepared by the Attorney General for the State of Florida for use by the Special Session of the Florida Legislature called in March of 1966 to draft and adopt the legislation here in question.

The quotation inserted by the Appellants is, of course, taken out of context and is extremely misleading when so considered. The entire document is attached hereto as Appendix D. It is quite clear from this document that the Attorney General did not advise or even suggest that a fifteen per cent (15%) variance from mathematical exactness could be adopted as a legal principle acceptable by the federal courts as a formula of constant application. The Attorney General simply advised the Legislature what the federal courts had done, but at the same time was careful to point out that any plan adopted must stand on its own merits, must be founded primarily on the population factor, and that any departure from mathematical exactitude must have a rational and reasonable basis.

The Appellants are constructing theories out of their own imagination and ascribing motives to the Legislature arising out of these imaginary theories having absolutely no foundation in fact. The federal district courts have not articulated or adopted a rule that might be described as the "maximum permissible deviation rule" and no such

rule was followed by the Florida Legislature in drafting and enacting HB 17-X(66).

The Appellants for their own purposes have constructed this rule, rather this phrase for it has no substance or validity as a rule, as a convenient means of describing what the Appellants choose to consider the primary guideline motivating the Florida Legislature in enacting the statute now under attack.

The District Court in *Toombs v. Fortson (Ga.), 241 F. Supp. 65*, did not adopt a rule that could be styled "maximum permissible deviation." To the contrary, the District Court in *Toombs* was careful to avoid even the suggestion that it was creating or adopting a mathematical formula as a ruling principle.

The Federal District Court for the Southern District of Florida in rendering the opinion and order made the subject of this appeal reviewed the details of HB 17-X(66) and restated the rule of decision to be:

> "Mathematical exactness or precision is not required, of course, but apportionment must be substantially on a population basis."

After reviewing the various tests argued by the respective parties and the deviations or lack of deviations in the various district, the District Court further noted in its opinion:

"Taken individually these statistics mean little, but collectively they tend to indicate that the Legislature's proposed plan is constitutionally valid."

This opinion and order of the District Court is printed in its entirety as Appendix A, attached to this brief, and it should be remarked that neither the *Toombs* case nor the language used therein is even mentioned anywhere in the opinion here attacked.

The above-quoted rule and holding of the lower court is in strict accordance with that court's previous ruling in this litigation found in its order dated December 23, 1965, wherein the District Court held:

"***Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. ***".

The lower court's order of December 23, 1965 is printed herein as Appendix B.

The Federal District Court's following the mandate of the Supreme Court in *Reynolds v. Sims, 377 US 533*, and *Roman v. Sincock, 377 US 695*, have all been careful to point out that each reapportionment plan in the particular state involved must be considered on it own merits and

under the unique circumstances obtaining in each state.

3. There is no pattern of under representation for the populous counties and over representation for the more sparsely settled rural counties.

In *Sobel v. Adams, 208 F. Supp. 316,* the lower court noted at page 324 of the opinion:

> "The need for reapportionment arises, we are told, because of a strangle hold which the rural areas have had upon the Florida Legislature. What is urban and what is rural, so far as a county is concerned, may depend upon a point of view. For example, Polk County is the eighth Florida county in population.
>
> ***Polk County, it would appear, is neither urban nor rural but has attributes of both. An area which was rural yesterday may cease to be so tomorrow. The 1950 census showed Brevard County as having a population of 23,653. In 1960 the population was 111,435. ***The installations of the Federal Government at Cape Canaveral provide payrolls for 40,000 or more persons. The county has less of its former rural character."

(Sobel v. Adams, 208 F. Supp. 316, 324.)

The Appellants are simply engaged in a game of juggling statistics without working within any particular frame of reference as to what really constitutes an urban as distinguished from a rural area. But even accepting the

Appellants' population factor as the sole method distinguishing urban and rural areas, the only pattern appearing is the total absence of a pattern.

In the House, if the percentage deviation of a district's population per district is considered, it is found that twenty-three (23) rural counties are under represented, twenty-six (26) are over represented, while seven (7) are within two per cent (2%) of exact mathematical equality. Also in the House, five urban counties are under represented and two are over represented, while four are within two per cent (2%) of exact mathematical equality.

In the Senate, using the same test, it is found that twenty-four (24) rural counties are under represented, twenty (20) are over represented, while twelve (12) are within two per cent (2%) of exact mathematical equality.

Furthermore, the same areas are not disadvantaged in both Houses in those cases where deviation has been found necessary. The urban counties located in South Central Florida and along the Gulf Coast—Polk, Orange, Escambia, Pinellas and Hillsborough—are over represented in the Senate but, with the exception of Pinellas, are under represented in the House. But the urban counties on the Atlantic Coast—Duval, Brevard, Palm Beach, Broward and Dade—are under represented in the Senate but, with the exception of Dade and Palm Beach counties, are over represented in the House. Dade has almost exact equality in the House. Palm Beach is under represented in both Houses, while Volusia is over represented in both.

Moreover, out of sixty-seven (67) counties in the State, thirty-eight (38) deviate less than ten per cent (10%), sixty-three (63) deviate less than fifteen per cent (15%), while only four (4) deviate in excess of fifteen per cent (15%).

In actuality this juggling and balancing of statistics is an exercise having little, if any, meaning, and the Appellee agrees with the statement of the District Court in its opinion and order of March 18, 1966, now here for review, saying in part:

> "***Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests."

To say that this statute manifests a pattern of discrimination against urban areas requires a complete disregard for the facts of record.

> "***Consistent with this approach, in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole. Only after an evaluation of an apportionment plan in its totality can a court determine whether there has been sufficient com-

pliance with the requisites of the Equal Protection Clause. ***"
(Lucas v. Colorado General Assembly, 377 US 713, 735.)

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION:

1. The Appellants' argument upon this question is so presumptuous it borders on arrogance. The District Court stated its reasons for accepting the reapportionment plan enacted by the Legislature in clear unequivocal language.

Appellants take the position that the Legislature enacting the reapportionment statute in question was an unconstitutional body whose voice is not entitled to any more weight than that of the Appellants. It does not follow that because the Legislature is malapportioned it is thereby an unconstitutional and illegal body. If the assertion of illegality were accepted then it would appear that the Supreme Court of the United States has been acting erroneously in deferring to the malapportioned legislatures of the several states as being the proper bodies to create and enact reapportionment plans. Justice Douglas in his separate concurring opinion in *Baker v. Carr, 369 US 186,* at page 250 of the opinion noted:

"The recent ruling by the Iowa Supreme Court that a legislature, though elected under an unfair apportionment scheme, is nonetheless a legislature empowered to act (Cedar Rapids v Cox, 252 Iowa

948, 964, 108 NW2d 253, 262, 263; cf. Kidd v. McCanless, 200 Tenn 273, 292 SW2d 40) is plainly correct."

(Baker v. Carr, 369 US 186, 250.)

Later in *Reynolds v. Sims, 377 US 533*, and some of the series of reapportionment cases decided by this Court at the same time, this Court stated:

> "***And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so. ***"

(Reynolds v. Sims, 377 US 533, 586.)

> "***With the Maryland constitutional provisions relating to legislative apportionment hereby held unconstitutional, the Maryland Legislature presumably has the inherent power to enact at least temporary reapportionment legislation pending adoption of state constitutional provisions relating to legislative apportionment which comport with federal constitutional requirements."

(Maryland Committee v. Tawes, 377 US 656, 675,676.)

If Appellants' contention is followed to its logical conclusion there could never be a truly constitutional legislative body empowered to act. The present reappor-

tionment statute is based on figures already six years old and thus do not truly reflect the exact populations of the various counties. But as this Court has held, mathematical exactness is not required, only substantial equality. *Reynolds v. Sims, 377 US 533,* at page 579.

For that matter it is recognized that exact equality is merely an ideal impossible of fulfillment in reality. Populations are so mobile now that even an annual reapportionment schedule would not serve to reach mathematical exactness. However, the courts, recognizing the practicalities of the situation, have conceded that a schedule of every ten (10) years is reasonable and rational.

2. In a vain attempt to bolster their argument that the lower court abused its discretion, the Appellants on page 22 of their jurisdictional statement again go entirely outside the record. In footnote 4 the Appellants charge:

> "The character of the Legislature which enacted HB 17-X(66) is illustrated by its enactment of legislation by a substantial majority, despite the opposition of virtually all urban representatives, permitting small rural counties to permanently freeze the present allocation of certain tax revenues among the counties by bonding them for many decades into the future. This was done despite the Legislature's being specially convened to deal solely with reapportionment. The Gov-

ernor of Florida, chosen through an electoral process in which all voters have votes of equal weight, vetoed this enactment."

This statement is grossly misleading and foreign to any question attempted to be presented.

The special session called to enact the plan now under attack was called by the duly elected Governor of Florida to consider a plan evolved by the Governor basically following the Congressional Districts. After the special call the members of the Legislature by two-thirds vote as provided by *Article IV, Section 8, Florida Constitution,* broadened the call to consider other legislation *strictly of a local nature.* This is common practice, and could not in any way prejudice the Appellants or anyone else not within the area covered by the local bills. The Governor did veto these local bills but not for the reason insinuated by the Appellants. The bills were vetoed because the budget had already been enacted and approved for the biennium and the Governor felt these local bills should be deferred to the next regular session. All of this completely outside the record and has no relevancy to the question attempted to be raised, but the Appellee felt such assertions should be corrected in order to reflect a true picture.

In any event, the members of the Legislature who adopted the reapportionment plan here in question were experienced legislators with real knowledge of State problems and were citizens who had submitted themselves to the electorate of the State of Florida and had been chosen to

speak for the voters though coming from malapportioned districts. However, the Appellee finds no evidence that the Appellants have any special legislative abilities, nor is there any evidence that the voters of the State of Florida have ever chosen the Appellants to speak for them in any capacity.

Therefore, the Appellee respectfully submits that the Appellants have no standing to maintain this appeal, that the Appellants present no substantial question for the decision of this Court, and that this appeal should be dismissed or that the judgment and decree of the District Court should be affirmed.

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John A. Madigan, Jr.
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Key West, Florida
Attorneys for W. B. Freeman,
Supervisor of Elections of Monroe
County, Florida, Appellee.

APPENDICES

APPENDIX A-1

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 186-62-M-Civil-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical exactness or precision is not required, of course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% over-represented to 10.56% underrepresented, creating a ratio of 1.30:1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majority of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41:1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord*, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra*.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

WARREN L. JONES

United States Circuit Judge

WILLIAM A. McRAE, JR.

United States District Judge

DAVID W. DYER

United States District Judge

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the
State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be up-

held. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's, with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the

same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount

to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisible to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt

a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "State make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L. Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed as applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florda legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

Warren L. Jones
United States Circuit Judge

William A. McRae, Jr.
United States District Judge

David W. Dyer
United States District Judge

APPENDIX C

Memorandum

To Honorable Chuck Hall, Mayor
Members, Board of County Commissioners

Date March 21, 1966

Subject Swann v. Adams Reapportionment

From Thomas C. Britton
County Attorney

I regret to report that the District Court on March 18 approved the 48 senator 117 Representative plan adopted by a special session of the legislature after eight days deliberation on March 9. In doing so, the Court rejected the plan filed in July 1965 jointly by the County, the plaintiff, the Government Research Council and the League of Women Voters. The Court had requested the filing of plans.

Of the many plans filed, our plan (approved by this Commission on July 6, 1965) provided the most equal representation of any submitted. The maximum deviation from equal representation was 3.4 percent. It also had the virtue of providing 32 senators and 68 representatives as required by Article VII, Section 2 of the Florida Constitution.

The legislative plan approved by the District Court on Friday is within acceptable limits as to Dade (within one percent in the House, 5.87 percent under-represented in the Senate). However, as to the rest of the State, it plainly

fails to meet the accepted tests: that no deviation *that is avoidable* be permitted, and no deviation above 10 to 15 percent will be tolerated.[1] In the Senate 3 counties exceed 15 percent and 12 exceed 10 percent. In the House 3 counties exceed 18 percent and 29 exceed 10 percent. Furthermore there is a clear pattern in the discrimination in favor of the rural counties.

[1]The District Court itself announced the rule last December: "Variations are to be sanctioned *only when they cannot be avoided.* We do *not* think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N. D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle."

I have been instructed by the Mayor to take no action in this case until the Commission has had an opportunity to reach a decision on whether a third appeal to the Supreme Court should be taken. The deadline for an appeal is April 7.

Although Dade County is not presently invidiously discriminated against, I recommend that an appeal be taken for three basic reasons:

1. The decision is erroneous and the plan invidiously discriminates against much of the rest of the State. In this litigation, we have successfully carried the struggle thus far for all Floridians who were denied equal representation. I do not think we should stop short of a constitutional solution because we now have our relief. Whether it pleases us or not we have assumed the role of lead-

ership in our State. We should assume the responsibility as well. An appeal, if unsuccessful, would do no harm to us or anyone else. An appeal, if successful, could not adversely affect the citizens of Dade.

2. If neither the plaintiff nor we appeal, it is virtually certain some other party will challenge this plan, either by separate action or by appeal from an order by this Court denying leave to intervene for the purpose of appealing. See *International Union v. Fafnir Bearing Co.* (1965) 15 L. Ed. 2d 272, 275. In either event, the ultimate resolution by the Supreme Court would be delayed (if handled by others not already in the case) very probably so as to unreasonably compress the selection of legislators in time for the 1967 session or even delay the session. In this election year, it would seem highly improbable that no one will wish to assume the leadership toward equal representation for the entire state, even if the plaintiff and we elect to take no further action.

3. If this plan is not tested before the Supreme Court, a new standard of tolerance for apportionment will have been established by default, a standard which would permit the legislature in a future session to saddle Dade with the 15 percent under-representation accorded Polk by this plan. The next census is but four years away and will surely entitle us to substantial increases in representation. Of necessity all our figures now are based on census figures presently six years old.

Conclusion. In short, I urge an appeal not only because I believe it our duty and responsibility, but also because I can see a strong probability of adverse consequences to our people if we do not appeal and no disadvantage to any legitimate interest if we do appeal. However, since this is unquestionably the most important litigation in which Dade County has ever been concerned, the Commission should consider the matter and make the decision and I would welcome your judgment and instructions.

Thomas C. Britton

County Attorney

TCB/jp

APPENDIX D

STATE OF FLORIDA

Office Of The

Attorney General

Tallahassee

March 2, 1966

CRITERIA AND GUIDELINES FOR REAPPORTIONMENT AS ESTABLISHED BY THE FEDERAL COURTS.

By: Earl Faircloth

Attorney General

1. A Majority of the people must be able to elect a majority of the Legislature.

2. Membership in both houses must be apportioned on a population basis.

3. Consideration of areas, economic interest or political subdivisions standing alone do not provide valid criteria for apportionment but a combination of these factors may be used so long as population is a major consideration. Under no circumstances may these or any other factors be used except on the basis of a rational or reasonable plan of apportionment.

4. Neither mathematical exactitude nor a rigid and uniform formula is required, but each plan must be reviewed on its own merits and any deviation from population must be justified.

5. The 1960 federal census must be the criteria for determining the population of a county.

6. The allowable mathematical percentage variance differs in some of the Supreme Court decisions. However, a study of these decisions reveals that a percentage variance of more than 15% would be difficult to sustain as complying with "one man - one vote." It is therefore respectfully submitted that a percentage variation not exceed 15%.

APPENDIX E

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN, Plaintiff, v. TOM ADAMS, Secretary of State of the State of Florida; CLAUDE R. BROWN, Supervisor of Registration of Dade County, Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida, Defendants.	COMPLAINT

COMES NOW THE Plaintiff, RICHARD H. M. SWANN, and respectfully represents as follows:

I.

That this Court has original jurisdiction of this action, and the Plaintiff has the right to bring this suit under the Civil Rights Act, 17 Stat. L. 13 and 16 Stat. L. 144, U.S.C. Sections 1983 and 1988, which provides as follows:

"Section 1983. Civil Action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." (R. S. Sec. 1979)

"Section 1988. Proceedings in vindication of civil rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, ***"
(R. S. Sec. #22)

Additionally, this Court has jurisdiction under 62 Stat. L. 932, 28 U.S.C. Sec. 1343 (3). This section reads as follows:

"Section 1343. Civil Rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: - - -

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

II.

Under 62 Stat. L. 968, 28 U.S.C. 2281 et seq., special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state law or statute by restraining the action of any officer of such state whenever said application is based on the unconstitutionality of such law or statute.

III.

That the Plaintiff is a citizen of the United States and of the State of Florida, and as a registered voter in said State is entitled to vote for the members of the Legislature of the State of Florida. In particular:

(a) The Plaintiff, RICHARD H. M. SWANN, resides at 7430 S. W. 57th Terrace, Dade County, and is a qualified voter in the 13th Senatorial District, also known as Dade County, Florida.

IV.

That the Defendants are all citizens of the United States and of the State of Florida, and reside within the State of

Florida; the Defendant, TOM ADAMS, is the duly qualified and acting Secretary of State of the State of Florida, and in said official capacity it is his duty, among other things, to give notice of state elections, to receive the filings of candidates for state office, to prepare ballots and instructions for the voters, to distribute copies of the election laws of the State, to receive all election returns, to organize a canvassing board to assist him to count said returns and to declare the results thereof. The Defendant, CLAUDE R. BROWN, is the duly qualified and acting Supervisor of Registration of Dade County, in the State of Florida; the Defendant, E. L. GATES, is the duly qualified and acting Supervisor of Registration of Broward County, in the State of Florida; the Defendant, W. B. FREEMAN, is the duly qualified and acting Supervisor of Registration of Monroe County, in the State of Florida.

This action is brought against the aforesaid Supervisors of Registration individually and as representatives of all other supervisors of registration similarly situated in the State of Florda; such persons are so numerous as to make it impracticable to bring them all before the Court; there is a common question of law involved, namely the constitutionality of Article VII, Sections 2 and 3, of the Constitution of the State of Florida, and Chapter Ten, Florida Statutes, 1961, Section 10.01 and Section 10.03, and of Chapter Ten, Florida Statutes, 1961, Proposed Sections 10.01 and 10.03, and common relief is sought against all members of the class. In said official capacity it is the duty of the aforesaid supervisors of registration, within their respective counties, to receive the filing of candi-

dates for the Legislature whose districts lie wholly within their county, to prepare ballots, to organize canvassing boards to assist in counting said returns and to issue certificates of election.

V.

That Article 14, Section 1, of the United States Constitution, provides in part as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This provision of the Constitution of the United States contains a guarantee to the citizens of the right to vote in state elections and that their votes shall be equally effective with any other vote cast in said state elections.

VI.

That the Plaintiff, as a citizen of the United States and of the State of Florida, has the right conferred by the Constitution of the State of Florida, to have the entire membership of the Florida Legislature reapportioned every ten years. Article VII, Sections 2 and 3 of the said Florida Constitution, provides, in part, as follows:

> "Article VII, Section 2. Number of Members of Senate and House of Representatives; Terms: The

Legislature shall consist of not more than thirty-two members of Senate, and of not more than sixty-eight members of the House of Representatives. The members of the House of Representatives shall be elected for terms of two years, and the members of the Senate shall be elected for terms of four years except as hereinafter provided."

"After VII, Section 3. Apportionment of Representatives in Senate and House of Representatives. The Legislature that shall meet in regular session A. D. 1925, and those that shall meet every ten years thereafter, shall apportion the Representation in the Senate, and shall provide for *thirty-eight (38) Senatorial Districts, such Districts to be as nearly equal in population as practicable,* but no county shall be divided in making such apportionment, and each district shall have one Senator; and, at the same time, the Legislature shall also apportion the Representation in the House of Representatives, and shall allow three (3) Representatives to each of the five most populous counties, and two (2) Representatives to each of the next eighteen more populous counties, and one Representative to each of the remaining counties of the State at the time of such apportionment. Should the Legislature fail to apportion the Representation in the Senate and in the House of Representatives, at any regular session of the Legislature at any of the times herein designated, it shall be the duty of the Legislature or Legislatures succeeding such regular session of the Legislature, either in special or regular

session, to apportion the Representation in the Senate and in the House of Representatives as herein provided. The preceding regular Federal or regular State Census, whichever shall have been taken nearest any apportionment of Representatives in the Senate and in the House of Representatives, shall control in making any such apportionment." (Underscoring Added)

The intent and purpose of the aforesaid provisions of the said Constitution is that the members of the Legislature must be elected by the people of the State of Florida, on a basis of fair and equal representation of the individual electors, in said state and that the said Senators and Representatives must be equally apportioned throughout the state in districts which are arranged in proportion to the number of inhabitants therein.